

April 13, 2010

Michael and Jani Priestley
16991 Maple Circle
Lake Oswego, OR 97034

Re: Notice of Decision for application **PLA-10-01**
(10609 SE 36th Ave and Tax Lot 1S1E36AA17900, Milwaukie, Oregon)

Dear Mr. and Ms. Priestley:

This letter constitutes administrative approval of application PLA-10-01 under Milwaukie Municipal Code (MMC) Subsections 17.12.030 and 19.1011.1. This approval is based on the following findings in support of approval:

1. The property line adjustment is between two lots. One lot is developed with an existing duplex and is located at 10609 SE 36th Avenue; it is described as Tax Lot 17800 on Map 1S1E36AA. The other lot is unaddressed, undeveloped, and is located just south of 10609 SE 36th Ave; it is described as Tax Lot 17900 on the same tax map (1S1E36AA).
2. Michael and Janise Priestly are the owners of both properties. Sam Humphreys submitted the application on behalf of the owners.
3. Both properties are zoned Residential R-3 and are subject to the standards of MMC 19.304 Residential zone R-3.
4. The applicant proposes to adjust the common property line between the subject properties by moving it approximately 25 feet to the north, closer to the existing duplex located on Tax Lot 17800. The proposed adjustment would increase the size of Tax Lot 17900, which is undeveloped.
5. MMC 17.16.040 specifies the materials that must be submitted with an application for a property line adjustment. Staff finds that the materials submitted by the applicant meet this requirement. A condition has been established to ensure that the recording instrument includes the deed document numbers of the two properties and notes whether there are any recorded easements or restrictions for either property.

6. MMC 17.12.020 requires that property line adjustments be processed as described in MMC Table 17.12.020. Staff finds that the proposed property line adjustment does not modify any known plat restriction and has been processed pursuant to the provisions of MMC 19.1011.1 Type I administrative review.
7. MMC 17.12.030 specifies the approval criteria for property line adjustments. As outlined below, staff finds that the proposed adjustment meets the approval criteria.
 - a. MMC 17.12.030.A.1 requires compliance with Title 17 Land Division and Title 19 Zoning.

Both lots are rectilinear properties and meet the design standards of MMC 17.28. Both are bounded by 36th Ave on the east and by 3430 SE Harrison St on the west. Tax Lot 17800 (10609 SE 36th Ave) is bounded by Harrison St on the north and by Tax Lot 17900 on the south. Tax Lot 17900 is bounded by Tax Lot 17800 (10609 SE 36th Ave) on the north and by 10669 SE 36th Ave on the south. The proposed adjustment is a rectilinear shift of the common boundary line, so the resulting lot shapes will not change. The proposed adjustment will not create a compound line segment.

The existing and proposed conditions for both lots with respect to the R-3 zone standards in MMC 19.304 are shown in Table 1, below:

Table 1 – Zoning Compliance

Applicable R-3 Zone Standards	Minimum Standard	Tax Lot 17800 (duplex at 10609 SE 36 th Ave)		Tax Lot 17900 (unaddressed and undeveloped)	
		Existing	Proposed	Existing	Proposed
Lot Size	5,000 sq ft OR avg of 3,000 sq ft per dwelling unit	11,495 sq ft	8,595 sq ft	9,200 sq ft	12,100 sq ft
Front Yard Setback	15 ft	19.5 ft	No change	n/a	n/a
Side Yard Setback	5 ft (55 ft for street-side yard on Harrison St ¹)	50.5 ft (north side) 33 ft (south side)	50.5 ft (north side) 7.7 ft (south side)	n/a	n/a
Rear Yard Setback	15 ft	48.2 ft	No change	n/a	n/a
Lot Coverage	40%	13%	18%	n/a	n/a
Minimum Landscaping	35%	75%	66%	n/a	n/a
Frontage on a Public Street	35 ft	215 ft (total frontage)	190 ft (total frontage)	80 ft	105 ft

¹ As per MMC 19.401.2, Harrison St between the Milwaukie Expressway (Hwy 224) and 44th Ave requires an additional 40-ft setback from the centerline of the right-of-way, added on to the R-3 standard of 15 ft for street-side yards. Therefore, the required street-side setback on the Harrison St (north side) frontage of Tax Lot 17800 is a total of 55 ft from the centerline.

MMC 19.304.3.C establishes the street-side setback requirement of the R-3 zone as 15 feet. As noted in the footnote for Table 1, above, MMC 19.401.2 establishes an additional 40-foot setback from the centerline of Harrison St. Therefore, the total street-side setback requirement for Tax Lot 17800 is 55 feet, measured from the centerline of the right-of-way. The Harrison St right-of-way is 60 feet wide. The existing duplex on Tax Lot 17800 has a street-side setback of only 50.5 feet and so is nonconforming with the current standard. However, because the proposed property line adjustment does not further reduce the street-side yard and because the lot itself is not nonconforming, no variance request is necessary.

MMC 19.402.2.C allows yard setbacks to be reduced to 3 feet for uncovered patios. As proposed, the existing patio on Tax Lot 17800 that is nearest to Tax Lot 17900 will maintain a setback of approximately 5 feet from the adjusted property line, so this standard is met.

No changes are proposed to building height, off-street parking arrangements, or site access for the existing development on Tax Lot 17800 as part of this proposal. The proposed property line adjustment complies with the applicable standards of Title 17 Land Division and Title 19 Zoning.

- b. The proposed lot configuration is consistent with MMC 17.12.030.A.2, which requires that the boundary change allow reasonable development of the affected lots. The affected lots do not have any significant topography or other natural features that would necessitate the need for a variance. Staff finds that the proposed property line adjustment allows for reasonable development on the affected lots and will not create the need for a variance of any land division or zoning standard.
 - c. The standards of MMC 17.12.030.A.3 require that the boundary change not reduce the residential density below the minimum density requirements of the zoning district. As provided in MMC 19.304.3.L, the density standards for the R-3 zone are only triggered by proposals for subdivision, planned development, mixed use development, and other applications reviewed by the Planning Commission. In this case, the proposal is not one that requires review by the Planning Commission. The minimum density requirements of the R-3 zone are not applicable to the proposed property line adjustment.
- 8. MMC 17.04.120 establishes filing and recording requirements for property line adjustments. As conditioned, the application complies with this section.
 - 9. The Engineering Department reviewed the property line adjustment application for compliance with the standards of MMC 19.1400 Public Facility Improvements. MMC 19.1400 applies to partitions, subdivisions, additions, and new construction. The proposed land use application is a property line adjustment that

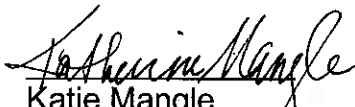
does not increase the number of existing lots. As a result, the proposed land use application is not subject to the requirements of MMC 19.1400.

Conditions of Approval

1. A recording instrument shall be prepared to demonstrate that the approved property line adjustment is consistent with the site plan prepared by Andy Paris and Associates, Inc., date-stamped "Received" by the Planning Department on March 25, 2010. The recording instrument shall address all relevant conditions of approval and shall include the related City land use file number as well as signature blocks for the Planning Director and Engineering Director. No other boundary changes are authorized by this proposal.
2. The recording instrument shall include the deed document numbers of the properties involved and shall note whether there are any recorded easements or plat restrictions for either property.
3. The recording instrument shall be submitted to the City for signature and then to Clackamas County for recording within 6 months of the date of this approval.
4. A copy of the recording instrument shall be submitted to the Planning Director no later than 15 days after recording with Clackamas County.

Advisory Note

1. As proposed, the existing walkway in the southeast corner of Tax Lot 17800 presents a small encroachment across the adjusted boundary line. Although the municipal code does not require the encroachment to be removed as part of this approval, the applicant is advised to consider altering the walkway to remove the encroachment in order to avoid potential civil disputes in the future.


Katie Mangle
Planning Director

Copy: Sam Humphreys, Applicant's representative (17430 Kelok Rd, Lake Oswego)
Brad Albert, Civil Engineer (via e-mail)
Tom Larsen, Building Official (via e-mail)
Mike Boumann, Clackamas County Fire District #1 (via e-mail)
Land Use File (PLA-10-01)